SPEECH OF JAMES H. BIRCH,

IN HIS CONTESTED ELECTION CASE

WITH

AUSTIN A. KING,

DELIVERED IN THE HOUSE OF REPRESENTATIVES,
JUNE 1, 1864.

Mr. SPEAKER: Before proceeding to avail myself of the permission which has been accorded me, it is deemed appropriate to thus respectfully record my appreciation of the Committee on Elections, to whom I have so long borne the relation of a contestant. They heard me courteously, intelligently, and as I doubt not, impartially; and I hence ascribe such division as was apparent upon their ultimate finding, mainly to the want of perspicuity in my own imperfect presentation of the case, which it is trusted I may in some measure supply in my more matured and deliberate argument to-day. To this it will be of course excusable to add, that should anything escape me unfit for the House to hear, it will be neither from impulse or inadvertence, but because the deliberate cautiousness of even a *written* exposition has failed to sufficiently chasten the *manner* of presenting the wrongs of which I am here the humble, yet accredited representative. Trusting to be appreciated and borne with accordingly, it is deemed proper to premise that the duty thus briefly denoted would have been respectfully recoiled from, after the action of the House upon a previous case from my State, had it not been felt that the case now pending had been in *no* substantial respect prejudged to my disadvantage—but the exact reverse. If, therefore, I can succeed in propitiating the attention of the House to the preliminary *distinction* which I propose to present between the two cases, I shall not despair of such subsequent consideration of the vitiating *record* which I shall read, as will demonstrate that upon *all* the elements of your past adjudications, the pretended "election" I am here to contest should be branded as at least a *nullity*.

Perhaps I cannot better "*inaugurate*" the preliminary distinctions thus briefly alluded to than by referring to the opening sentences of the speech of the gentleman from the seventh district, [Mr. LOAN,] whose case was considered and passed upon on the 10th of last month. Whatever difference of opinion may have prevailed in respect to the vitiations which were alleged against *his* election, he could at least advance to the discussion of them in the defiant consciousness that he was neither personally or officially tainted with the dishonor of having *incited* them—and so of the gentleman from the fifth district, [Mr. M'CLURG,] whose case remains to be disposed of. In that respect, (as will presently be seen from the testimony,) the cases are so *wholly* unlike, as upon that ground *alone* to justify a different finding, particularly when the argument as to the augmented political majority for the gentleman from the seventh district, as evidenced by the result of the subsequent *judicial* election, will be seen to absolutely *disapply* in the present case.

The distinction is no less radical and conclusive in several additional and concurring respects, which will be briefly glanced at in *this* connection, in order to be resumed and verified from the record (if necessary) in appropriate subsequent connections. Thus: It was argued in practical *avoidance* of the overawing which was complained of in the seventh district, that not only had a large *majority* of its votes been *polled* in the congressional election, but that the entire increase in the subsequent *judicial* election would have been insufficient, if added to the congressional vote of the contestant, to have overcome the majority of the sitting member. Now, sir, whilst all this was at least as fairly *arguable* in that case as any argument *could* be, predicated upon the proverbially small vote of a judicial election in comparison with a *political* election, it will of course suffice to demonstrate that the exact *reverse* was true in the case under consideration in order to suggest and enforce a *finding* the exact reverse. I refer, therefore, thus early to the record, (page 5,) to demonstrate that while the presidential vote in my district was 20,760, the congressional vote was but 9,370—"less than a *quorum*," according to our language here. Of this minority, the congressional vote of the sitting member was 4,243, being a plurality over the contestant of 1336; whilst it will be seen by the official certificate which I hold in my hand, that even the *increase* in the judicial vote over the congressional vote, not

only *overcame* that plurality, but that the party whose candidate the contestant was in the *congressional* canvass outvoted the congressional party of the sitting member 4130 votes in the subsequent *judicial* election. It will not of course impair the *point* thus established against the sitting member, when it comes to be listened to from the record, that between the period of these two elections he *abandoned* his congressional party and sought to become a leader in *my* party! That portion of the testimony may indeed *additionally* suggest the every-day fairness of remitting him to the ordeal of a new election, upon our now *common* platform, instead of countenancing him in the betrayals and assumptions which constitute *alone* the aggregate of his pretensions here.

The cases will be found wholly dissimilar in another important aspect, which is this: It cannot be argued in this case, as it was in the one from the seventh district, that as there was no threatening or overawing *previous* to the election, the testimony should expend itself in the exclusion of the particular poll at which it establishes a *special* violence. In this case, it will be seen from the testimony that the overawing was commenced and prosecuted *systematically* for weeks *preceding* the election, that it was at the incitation and with the *judicial and military co-operation* of the sitting member himself, and that it but naturally culminated on the *day* of the election. Of course not only every lawyer, but every intelligent gentleman, who will do himself the justice to reflect upon the difference which will be thus established from the testimony as to the *modes* of intimidation which were resorted to in the cases respectively, will not only concur in the distinction I have suggested, but when it shall be shown from the testimony in this case that the overawing was collusive and *systematic*, collusively inaugurated, and publicly and overawingly encouraged by the sitting member as a *judicial officer*, and thus co-operatively prosecuted throughout the district for weeks *before* the election, and "on the *day* of the election, with menace and violence, such as would deter a man of ordinary firmness from approaching the polls and tendering his vote;" when it shall be demonstrated from the testimony that the language thus quoted from the speech of the gentleman from Maryland [Mr. DAVIS] is as applicable to the district at large in *this* case, as it was to particular *precincts* in the case he was then arguing, I shall expect his ingenuous concession that upon his own theory and in his own subsequent language, "*that election is void.*"

There are still other points of difference in the two cases, prominent amongst which will be noticed the inability of the sitting member to get into our record any such testimony as was dwelt upon in the previous records in regard either to the character of my witnesses or my supporters. No raising of secession flags, no tearing down of the national banner, no holding back at any time from duty in the loyal militia; but the exact reverse, if necessary, will be demonstrated in respect to *my* outlawed "sympathizers" as we pass along. Invoking, therefore, a continuance of the courteous attention with which I have been thus far honored, I will proceed to so address myself to the record in this case, that *unless it be the understanding and determination of the dominant party that such and similar outrages upon the freedom of discussion and the ballot shall be systematically excused or encouraged*, such action may at least be proposed as to elicit the official *facts* in the case, should my own recital of them be in any sense impugned in the reply of the sitting member. This, I take leave to add, will be left entirely to gentlemen of the dominant party—to those, if any, who may feel that there is a distinction in the cases; since with them alone exists the power to redress the wrongs which I will proceed to make manifest. If *they* propose no further or additional consideration of the case, my more immediate friends and myself must fain be content to carry our appeal to the *country*, as best we may. It is but added, therefore, in this connection, that if I shall be able to demonstrate from the record that upon every principle of past adjudications this case enforces and demands a different judgment to that which the majority have rendered in the previous case from my State, I shall fain rely upon gentlemen of that majority to so shape the final issue as to elicit a direct vote upon the merits of the controversy which has so long detained me here. I have prepared for this purpose what has seemed to my friends upon this side of the House an appropriate resolution; but as they concur with me, not merely that the result of the controversy depends upon the distinctions to which I have adverted, but that courtesy as well as justice demands that such a resolution, if presented at all, should proceed from such gentlemen upon the opposite side of the House as I may be able successfully to impress with those distinctions, I will simply read it for information or reflection, and proceed without further preliminary to the record of the case.

"*Resolved*, That the election under which Austin A. King occupies a seat in this House as a Representative from the sixth congressional district of Missouri, was not "free and equal" in the sense ordained by the constitution of that State; and that the said seat is hereby declared vacant."

Without in any sense distrusting the ultimate action of the House upon such a resolution, it is deemed sufficient to premise that the constitutional guarantee therein alluded to was not only successfully held up in my State as a counterpoise and an answer to all the specious arguments in favor of the rebellion then and yet pending, but I may add, without immodesty, as a citizen whose residence and associations for the last six and thirty years entitles him somewhat to speak the sentiments of its staid and considerate men, that you have it more in your power to strengthen the true Union *sentiment* of the State, by giving practical and public *effect* to that guarantee, in a case like the present, which

admits of no dispute, than you could do by either penalties or arms.

Coming, therefore, without further preliminary to the consideration of the record in the case, from which it will be seen that every exception which was taken to the previous one is either met or avoided in the present one, it is of course conceded that the great practical *issue* is, whether the "judicial and military terrorism," which is charged by the contestant, was of a character which so overawed a portion of the qualified voters of the district as to have brought about the return of the sitting member, in contravention of that guarantee? Unless, therefore, the testimony in the case shall bring it fairly within the *exception* recited by the gentleman from Michigan, [Mr. URSON,] when reading from the rulings of the committee in the case of Wing and Biddle—unless, in the language of that report, "*corruption* shall appear sufficient to destroy all confidence in the purity and fairness of *the whole proceeding*"—I shall of course submit to a verdict against me of having raised here a "false *clamor*," instead of having presented a true *indictment*, against the sitting member.

As already stated, it appears from the deposition of the Secretary of State, at page 5 of the printed testimony now upon your tables, that the aggregate vote of the district, at the Presidential election in 1860, was 20,760, whilst the aggregate vote for Congress in 1862 (the election here in controversy) was but 9,370. Of this minority vote of the district, the sitting member received 4,243, the contestant 2,857, and two other candidates the remainder. It further appears from the testimony, that the sitting member became a candidate for Congress shortly after he had received the appointments of circuit judge and aid-de-camp to the commander-in-chief of the State militia; and that he gave out his purpose to hold on to his *judicial* station, as he did to his *military* position, until the regular recurrence of the *judicial* election, which was a year after the *congressional* election. The testimony of the colonel of his own county regiment is to the effect, in this connection, that in consequence of the positions he thus held in the judicial and military departments of the State government, his opinions were "but *naturally* listened to with consideration and deference in respect to the *military* operations of the times"—"that all the principal orders which were issued from his headquarters, in respect to subsistence, assessments, impressments, enrollments," &c., had, *at least*, his ready and entire *concurrence*—and the record will be seen to be such throughout as to identify him inextricably with the overawings of the state military authorities, in this and other portions of the district. When to this it is added, as will presently be seen, that the colonel already alluded to has felt constrained to acknowledge, in response to the direct interrogation of the contestant, (page 8,) that the whole course of the public speaking and less public conversations of this candidate, aid-de-camp, and judge was apparently calculated and designed to overawe that class of voters who had been enrolled under military order No. 24, and constrain them to either *change* their votes, *against* their free will, or to *abstain from voting at all*—and when it will be seen by those whose patience and attention I may be able to retain that such testimony abounds throughout the record in respect to that and other counties of the district, the inquiry which will doubtless suggest itself to every *ingenuous* juror in this case will be, whether there was anything in the fact of such a *military* enrollment which could be legitimately held to interfere with the *voting* prerogative of the citizens? So much of that order, therefore, as is deemed pertinent to this inquiry is here reproduced as follows:

"HEADQUARTERS MISSOURI STATE MILITIA,
"*St. Louis, August 4*, 1862.

"GENERAL ORDERS, No. 24.

"General Orders, No. 23, from these headquarters, dated July 28, 1862, is hereby revoked.

"All the loyal men of Missouri, subject to military duty, will be organized into companies, regiments, and brigades, as ordered in General Order, No. 19, from these headquarters, dated July 22, 1862.

"All disloyal men, and those who have at any time sympathized with the rebellion, are required to report at the nearest military post, or other enrolling station, be enrolled, surrender their arms, and return to their homes or other ordinary places of business, where they will be permitted to remain so long as they shall continue quietly attending to their ordinary and legitimate business, and in no way give aid or comfort to the enemy. Disloyal persons, or sympathizers with the rebellion, will not be organized into companies, nor required nor *permitted* to do duty in the Missouri militia."

It will be seen by reference to the testimony on page 32, that the practical effect of this and subsequent orders was that the men thus enrolled in the military service were to be mounted, armed, and subsisted (where necessary) by those who were to be enrolled on what came to be denominated "the sympathizing list"—a mere *military* arrangement, which it is not further the province of the House to here consider, than as it may be shown from the testimony that the sitting member took advantage of it to *judicially* misimpress and overawe that class of the people in respect to their right to *vote*. The point, therefore, to be kept mainly in mind is, that the absolute *duty* of enrollment under this general military order was explicit and *imperative*—so unequivocally so, not only according to the terms of the order itself, but by the official testimony, as to leave neither the enrolling officers nor the people any discretion, whatever, in regard to those who had at *any* time sympathized with the rebellion, however then "protesting (as they have since abundantly proven) their loyalty to the Government of the United States." Upon this cardinal point the testimony of one of the enrolling officers, which I will read from page 19, is as follows:

"I have resided in the town of Plattsburg, Clinton county, Missouri, for about eighteen years last past, and am a judge of the county court of said county. I have been provost marshal of said county since the 12th day of August, 1862, and yet am. In connection with that office, I had the duty assigned me by Lieutenant Colonel Swearingen of enrolling the citizens of said county on what was called

the 'loyal and disloyal lists.' On the loyal list it was my duty to enroll, for military purposes, all persons between eighteen and forty-five years of age, (being male citizens,) and on the (so called) disloyal list it was my duty to enroll all male citizens, of whatsoever age, who had at any time sympathized with the southern rebellion. I had no discretion in the matter, nor had the people."

I respectfully desire that this sentence be borne in mind, should the contestant here (as in the committee room) attempt to draw a distinction between voluntary and *in*voluntary enrollments upon this sympathizing list. Having fully *analyzed* his testimony in that respect, I shall be ready (if necessary in replying to him) to demonstrate that if he did, upon some occasions, *attempt* such a distinction, as it may be argued from his *testimony* that he did, the *distinction* could only have been conceived and presented in aid of the same judicial fraud and overreaching which constitutes the principal issue between us. I respectfully suggest, moreover, that if he will have the fairness to read *all* that his witnesses say, (as I shall read all that mine say,) it will be seen that not *one* of them were present during all of *either* of the speeches to which my witnesses testify, and that hence there is *no* discrepancy in the testimony. To this I but add, in this connection, that in the testimony which I shall read in conclusion, as to the judicial construction which he put upon the right of these same sympathizers to take the oath and vote in the *judicial* election, the sitting member will be made a witness against *himself* in respect to his judicial *mis*teachings (and consequent overawings) in the *congressional* election.

In respect to the enrollment, the witness continues as follows:

"The enrollment for the county was made, therefore, as directed in General Schofield's order, No. 24, and the explanatory circular of Brigadier General Hall, dated September 26, 1862. The said disloyal enrollment was not completed before the election which was held on the 4th of November last, nor have I yet completed it. The number enrolled up to the time of election was about four hundred. During the period of said enrollment Brigadier General Hall was commandant of the military district in which this county was situated, and hence I acted upon his orders in connection with those of General Schofield.

With regard to the speeches of the sitting member, of which I will presently produce a perfect cloud of testimony, this witness deposes as follows:

"I heard a portion of the speech which was made by Austin A. King in the court-house in the town of Plattsburg, Clinton county, Missouri, on the 13th day of October, 1862. He was very distinct in his expressions, and in conveying the impression that if any man who was enrolled on the disloyal list (so he phrased it) presumed to *vote* in the election then approaching, and did so, he would perjure himself, and be indicted by the grand jury. He brought this over several times, varying the phraseology, but still holding out the menace or fear of indictment to those who were enrolled disloyal, and attempted to vote. After the making of this speech I was conversed with by several persons, at different times, as to the right of sympathizers to vote. A number agreed with Governor King, and one of the militia, belonging to a company stationed at Hainesville, was very earnest in his declaration that King had stated the law correctly, and that such sympathizers ought not to be allowed to vote, and would not be allowed to vote. In the enrollment of the county, as a general *rule*, every man whose sympathies were *regarded* as being with the South was entered on the so-called disloyal list, although protesting his loyalty to the Government of the United States."

In other words, the enrolling officers followed out the imperative direction of the order No. 24, and would not *permit* those who had at *any* time sympathized with the rebellion to serve in the State militia, although protesting that they were *then* loyal to the Government of the United States. Yes, sir; *then* loyal—then willing and anxious to be enrolled on the *fighting* list, instead of the *subsistence* list—even *then* willing to take the *soldier's* oath of loyalty, as well as subsequently, at the election, so take the *voter's* oath of loyalty, but overawed to feel that the only way to avoid the menaced indictments of their *judge*, was not to vote against that judge for *Congress*.

Whilst upon this point I will come presently to even stronger depositions than the one I have just recited—showing at once the judicial overreaching and the judicial insincerity by which the sitting member dishonoringly *terrorized* himself into the seat he has so long contrived to occupy amongst you—I will for the present resume my classification by *counties*, to the end that each member of the House can decide for himself, *county by county*, as I pass along, upon the validity of *such* an election as the one here in controversy.

Going back, therefore, to the county of the sitting member, it will be seen from the deposition at page 17, that in a public speech which he delivered at Russelville, shortly before the election, he stood forth in the judicial and military panoply with which he was invested, to exasperate the soldiery to the *outlawry* of his competitor for Congress, whom he denounced as being "as grand a traitor as Jeff Davis ever was"—and "declared, in continuation, that any man who voted for him *ought* to be placed upon the disloyal list!" The witness thus continues:

"At that point of his speech, Lieutenant (or Adjutant) Henry, who was upon the stand with him, in full uniform, and who was also recognized as an assisting enrolling officer, rose from his seat, waved his hat above his head and proclaimed aloud, 'Yes, governor, and I *will* place, or see to it that every man is placed upon the disloyal list who does vote for him,' or words to that effect. I left the speaking shortly after this, and, from conversations with and among the people directly afterwards, became satisfied that such a speech from the judge of the court, accompanied by such a threat from a high military officer, would operate very much to the disadvantage of Birch in the election, and it did so. Some who I knew had intended to vote for Birch, before listening to the speech and the menace, changed their purpose and finally voted for King or Samuel, under the fear with which they acknowledged that the speech of the judge and the threat of the adjutant had inspired them, with respect to their personal safety and that of their property if they voted for Birch, whilst others, as I understood and believe, did not vote at all. Having been at the election in my township, (which is one of the heaviest in the county,) and mingled as usual in conversation with my acquaintances, I have no hesitation in expressing the opinion that Birch would have gotten at least twice as many votes as he did, if it had not been that the people were intimidated and overawed by the speeches of the judge and the threats of the military, who were understood to be his partisans; and I concur in the opinion I have heard repeatedly expressed by well-informed citizens in different parts of the county, that if the election had been an untrammelled, or a free one, Birch would have carried the county."

Throwing out in this connection (as I have already intimated) the consideration of another deposition concurring with the foregoing, it

appears from still another deposition, (at page 40,) that in this county, as in others, its military organization and police was in the hands of the partizans of the sitting member; and it is *expressly* testified to by the colonel of his home regiment that "*it was understood and expected* that such and similar means [as those above recited] would avail to bring about such an ultimate influence, *by intimidation*, as to prevent Birch from carrying the county." Observe gentlemen, I am quoting the reluctant admissions of a witness who had been the neighbor, the friend, and the partizan *supporter* of the sitting member; and I respectfully demand of you, upon your oaths and your honor, as judges and as Representatives, whether a certificate of election thus conspired for and thus ignobly *won*, shall longer entitle its possessor to claim among you the immunities of an equal or a peer? Am I replied to that this is but a single county, and that the majority of 498 which he there obtained by means so lawless and dishonoring should alone be deducted from the poll of the sitting member? I answer, not merely that the same will presently be proven in respect to other counties, but that by reference to the testimony of the same regimental commander, it will appear that *a similar reliance upon the workings and effect of military intimidation was entertained in respect to the district at* LARGE, and that *the sitting member received as many votes as he had at any time calculated upon*, and MORE than it had been thought would suffice to *elect* him! That I may avoid all risk of injustice in respect to a point so delicate and conclusive, the testimony of the witness in this regard will be here recited at length, from page 8, as follows:

"I was colonel of the enrolled Missouri militia of Ray county during the canvass for Congress in the year 1862. Judge Austin A. King was aid-de-camp to the Governor and an assistant inspector general, and as such, in connection with his position as a lawyer and a judge, was but naturally listened to with consideration and deference in respect to the military operations of the times. My recollection is that all the principal orders that were issued from my headquarters, in respect to subsistence, assessments, enrollments, &c., had *at least* his ready and entire concurrence; and being here expressly interrogated as to whether his whole course of public speaking, and his less public suggestions and conversations, in respect to the right of voting in my county, was not apparently designed and calculated to overawe that class of voters who had been enrolled, under order No. 24, on what was called the sympathizing or disloyal list, and either constrain them to ultimately change their votes against their free will or to abstain from voting at all, a regard for truth admits of no other reply than that *it was*. I heard Lieutenant Hemry, who was employed as an assistant enrolling officer, and who was known and recognized as a supporter of Governor King, (as I then was,) declare openly and repeatedly that any man who voted for Birch ought to be enrolled on the disloyal list, and otherwise dealt with as a disloyalist; and it cannot be denied that it was understood and expected that such and similar means would avail to bring about such an ultimate influence over the people, as, by *intimidation*, to prevent Birch from carrying the county, which his friends at one time expected he would do. A similar reliance was also entertained in regard to the district at large. From expressions I heard from Governor King, from time to time during the canvass, and particularly from a remark which he made when the returns were received, (in which he claimed that all the loyal men of the district voted for him,) I am confident he received as many votes as he had at any time calculated upon, and even more than it had been thought would suffice to elect him. It is deemed but just to myself, and to both the parties herein concerned, to add, that from the political course of the Governor since the election, I am as much opposed to him now as I was once in favor of him; and that such, within my own knowledge, is the feeling of a large proportion of those who most prominently and earnestly supported him in the canvass of 1862, and whom he then affected to regard as the only *true* Union men of the district. I need scarcely disclaim the exercise of any undue favoritism (as I then looked at it) in the election referred to, or withhold the opinion that it was the *apprehension* of military punishment, instead of any *real* danger, which had the effect of overawing such portion of the supporters of Judge Birch as ultimately gave way before it."

So much for the county of *Ray*, the home of the sitting member, to which I have given precedence in the arrangement and classification of my testimony simply because it *was* his home, and as such would be but naturally looked to as denoting the *plan* of the campaign, and furnishing "the key note" upon which his partizans were to act throughout the district.

Passing next to the county of Carroll, over which he also continued to preside as judge, and where the opinion is likewise intelligently expressed in the testimony that a majority of the electors were in favor of the contestant for Congress, as they had been at the previous election between the same candidates for the convention, the testimony will at once dishonoringly and vitiatingly disclose *why it was* that the contestant received but seven votes for the seat here in contest, leaving to the sitting member a majority of 625 of those which were permitted to be *polled!* It will be seen upon page 11 that when I was about half through the speech I was addressing to the electors assembled in the Court House, I was peremptorily *forbidden* to proceed further in it by the military commandant of the post, who was a partizan supporter of the sitting member, and by whom I was also forbidden to even *attempt* to fill my three remaining appointments in other portions of that county. (Submitting parenthetically to the representative honor and manhood I am privileged to address, whether there is even *one* of you who would consent to the absolute *ignominy* of occupying a seat here upon a certificate which had been won in overawing *repression* of the elective good will of his *people*—in conspiringly *preventing* his competitor from assigning before them the reasons why he would support or oppose particular public measures *just as you all do here*—the additional outrages under consideration will be resumed from the record.) On the day following, a public meeting seems to have been held, the leading members in the organization of which are proven to have been *then* the military partizan of the sitting member, and to have included the *sheriff of his Court* and the subsequent foreman of his *grand jury!* At this improvised meeting, it will suffice to recapitulate from the proceedings (pages 11 and 12) that, after specifically endorsing the congressional candidacy of the sitting member, and bestowing a correspondent approval upon the previous day's suppression of all further discussion of the *issues* involved in the canvass, they no less lawlessly announce their edict against a *free election* in these words:

"*Resolved*, That we recognize in said Birch a decided *secessionist*, and shall for all purposes treat his *supporters* as secessionists."

For a purpose, which will presently become apparent, it is proper to recite in this place, from page 11 of the printed testimony, the names of the officers and "*spokesman*" of this meeting, as follows: Chairman, William Sinnard; Secretary and Speech-maker, George Pattison; Committeemen, Samuel Winfrey, Samuel Turner, O. J. Kirby, James Minnis, Levi Shin, James O'Gorman, and David Utt. To the *basely* slanderous outlawry thus publicly proclaimed against my friends and myself, as well as to the kindred fulminations in the public speech of the sitting member in his own county, it is my good fortune to refer, in refutation, to the entire *record* of our controversy here, including, of course, my cross-examination of his own witnesses. From that record it will be seen that the imputations upon my loyalty have no other support than the mere calumnious assertions of the sitting member and his then military partizans; and these will, of course, no more be confounded with the *testimony* here than they were in the committee room. It will hence, of course, suffice to demonstrate that such proceedings, carried forward under auspices which denoted at least a judicial *immunity*, had but the natural effect they were *designed* to have, as testified to by the commandant of his own county regiment, not only in regard to that county, but to the district at large. To assume nothing, therefore, as to the number who were influenced by such a process of intimidation to *change* their votes, it will be seen by a comparison of the congressional with the presidential vote of this county, that there was a falling off of nearly one half, and that in a community where less than two years previously I had been honored with a majority of 80 votes *against* him, when he was *not* an aid-de-camp or a judge, he did not scruple to so prostitute these high official stations, as, by the inspiration of an official *terrorism*, to essay the distinction which he here enjoys, and which he had been premonished would be differently bestowed by confidence and good will! Lest, however, the extremity to which he may feel himself reduced should suggest the reading of the unsupported calumnies of this mob assemblage of his military partizans at Carrollton, as a *justification* for the lawlessness with which they foreshadowed the terrorism they inspired, it is deemed at least pardonable to recite from the record the testimony of the Senators and Representatives who heard my current speeches in the adjoining counties, which is as follows:

"We heard the speeches delivered by Judge Birch in our respective counties during his canvass for Congress. Some of us so far concurred in his sentiments and opinions as to support his election, whilst others of us supported one of the other candidates. We concur, however, that there was nothing in his utterances or sentiments which we regarded either as disloyal to the Government of the United States, or as transcending the legitimate range of discussion involved in the canvass he was then prosecuting for a seat in Congress."

This joint deposition having been taken at the Capitol of Missouri, during the session of its Legislature, and including, among others, the names of the Senators and Representatives from the county of the sitting member—and *there being no testimony in the record that the contestant spoke otherwise in his canvass than the sitting member has voted here*—will it not obtrude itself upon the practical understanding of every member of the House, that these exasperating denunciations against me were but the collusive *pretexts* for the systematic outlawry you are here called upon to repair and redress? It was not in this case, as was suggested in extenuation of an alleged impulsive patriotism in the previous cases; but it was the calculating and systematic *strategy* by which one portion of the people were to be appalled and practically *divested* of their franchise, to the end that the candidate in whose interest it was conceived and executed might thereby obtain the *certificate* of a Congressman, whilst wholly unable to obtain the *vote* of a Congressman. When it is borne in mind that to be thus banned by the military and judiciary as "a traitor" or "a secessionist," was equivalent in that district to such oppressions and perils that even the *bravest* might hesitate to incur such enmities as foreshadowed the revenges of military assessments, imprisonments, and assassinations, could it be possible to have even *devised* a more effective system of co-operative and all-embracing intimidation, or one more *emphatically* to be reprehended and redressed, than that which is developed in the record before you?

That the meeting at which these outrages were so distinctly and unredressively foreshadowed was essentially a partizan and a military one, satisfactory testimony will be found in the deposition of a witness who resided in another county, and who was hence not *afraid* to testify, for the reason which I have satisfactorily established before the committee for having failed to procure direct or *resident* testimony as to to this and several other counties of the district. At pages 15 and 16, Williamson P. Gibson testifies, as follows:

"From the nature of my business, I have been a good deal in and through the counties of Ray, Carroll and Chariton, during the past year; have sojourned considerably in Carrollton and its vicinity, and have become acquainted, personally and otherwise, with the sentiments, opinions and callings of a number of the leading men in different parts of the county.

"Question by contestant. Do you know the public positions which were held, respectively, by William Sinnard, George Pattison, Samuel Winfrey, Samuel Turner, O. J. Kirby, James Minnis, Levi Shinn, James O'Gorman, and Lieutenant David Utt, on or about the first of October, 1862?

"Answer. Having been in Carrollton shortly after a public meeting had been held, in which Judge Birch and his friends were denounced as secessionists, my recollection is that all these names were mentioned as having been leaders in that meeting, as friends of Governor King, and that in some manner or other they all belonged to the military police of the county, and that therefore the resolutions and declarations of the meeting would be carried out. I am not personally acquainted with all the gentlemen, but during subsequent visits to Carrollton I have learned that Sinnard, Winfrey, and Shinn constituted the board of military assessors; that Minnis was the provost marshal for the county; that Kirby was the adjutant of

the regiment of enrolled Missouri militia for that county ; that Utt was lieutenant in one of the companies, (not S anley's ;) that O'Gorman was a private in Stanley's company ; that Turner was (as he yet is) the sheriff of the county. Pattison was a candidate for the legislature, and was elected. I am satisfied that the information I have received upon this subject is correct, and that the proceedings of that meeting had the crowning effect they were intended to have, in deterring the friends of Judge Birch from making any further effort in his behalf, and of keeping them from the polls on the day of the election.

"Question by contestant. Have you heard such an expression of opinion among the people of that county as to have yourself formed an opinion as to what would have been the relative strength of King and Birch, had the election been a free and fair one?

"Answer. All with whom I have conversed upon the subject, including one of the prominent friends of Governor King, expressed the opinion unhesitatingly that the political position of Judge Birch was more acceptable to a majority of the people of the county than King's was ; and that he would have received that majority had the people felt that they were free to vote for him, without danger at the polls or otherwise. Such also were the opinions I have heard similarly expressed in passing, on the same business, through the adjoining counties of Ray and Chariton, and I concur in those opinions. In the election canvass, Judge Birch seemed everywhere to have the countenance of the constitutional or pro-slavery party, whilst the support of Governor King seemed to proceed mainly from what was termed the radical party, though he and they seem to have become radically *antagonistic* within the last few months.

"Question by contestant. Have you heard Captain Stanley converse recently in respect to the part he took against Birch, when in command of Carroll, as published in connection with the proceedings of the meeting you have alluded to? If so, please state the substance of his conversation.

"Answer. I have heard him speak of the part he thus took against Birch, and say he would not do so if the thing was to do over again. This was not long since, and was spoken by Stanley in connection with the course King was pursuing towards the radicals, who claim that he has deserted them after they had elected him. Stanley does not command at Carrollton now, but does at Utica."

It having been previously established that the persons thus identified were, respectively, the chairman, secretary, and committeemen of the meeting under consideration, nothing need of course be added in respect to the object it was intended to accomplish, and which it *did* accomplish. But when in connection with this it is taken into consideration (page 40) that Pattison, who was the spokesman and secretary of this unlawful and indictable mob, was appointed a year afterwards by the sitting member to be the spokesman or foreman of a grand jury, which had been summoned by the sheriff of his court (another committeeman) as the last one which was permitted by the limitation law of our State to even investigate this wide-spread defiance of our election laws ; and when it is seen by the deposition of the prosecuting attorney, at page 29, that the judge was everywhere significantly *silent* in his charges to the grand juries in respect to the *audacious* outrages upon the freedom of election, and that consequently *no indictment was anywhere found against any of his supporters and sympathizers*—when all this is seen and reflected upon, the duty of redressing this all-embracing and demoralizing public crime in the only manner which pertains to the national dignity and authority would seem too imperative for either party parley or additional elaboration.

Passing, therefore, to the county of Saline, it will be seen by a comparison of the dates which are mentioned by the witnesses, respectively, that the extended publication which was ordered to be made of these military proceedings in Carroll had been "just in time" to beget a corresponding avowal of violence toward the supporters of the contestant in other counties, of which the following depositions may be permitted to speak for themselves.

William H. Lightfoot testifies as follows :

"About the middle of October last Lieutenant Colonel William A. Wilson, in command of the militia of Saline county, put up at the 'Sedalia House,' of which I am clerk. The conversation turning upon the subject of the congressional election then pending in the sixth congressional district, Colonel Wilson publicly declared his intention to arrest any man in Saline county who voted for Judge Birch, as a traitor, and *punish* him as a traitor."

And Eli L. Beeding, as follows :

"I am a merchant, and reside at Cambridge, Saline county, Missouri, and have resided in that place and vicinity for the last nineteen years. On the day of the election I was at Marshall, (the county seat,) and went to the polls, with five other gentlemen, to vote. A ticket had just been read out for Mr. Samuel, and the State and county officers, when I presented myself, and remarked that I would vote the same ticket, substituting only the name of Judge Birch for Congress, instead of Mr. Samuel. Upon saying this, one of the judges of the election replied to me, that if I voted for Birch I would be put in prison before sundown. I asked if that was the fact ; and upon his replying very earnestly in the affirmative, I told him I would, under these circumstances, vote for Mr. Samuel ; and myself and the five other gentlemen cast our votes accordingly. Judge Birch seemed to be the accepted candidate of the constitutional or pro-slavery party of my county, and I entertain no doubt whatever that, in a free election, he would have greatly outvoted Governor King."

It is deemed but necessary to add in this connection, that the congressional vote in this county was 543, (of which I received but 52,) against a presidential vote of 1964 votes ; of which more anon.

I will direct your attention in the next place to the county of Caldwell where, also, the sitting member continued to be "the *judge*"—and here, too, it will be quite sufficient to permit the deposition of a single unimpeached and intelligent witness to speak for itself. It reads as follows :

"I reside at Kingston, Caldwell county, Missouri ; am a physician and surgeon by profession, and the proprietor of a drug store in Kingston. I have had ample means of understanding the public sentiment of my county in respect to the recent congressional election between James H. Birch and Austin A. King, and repeat the opinion I have so often and undoubtingly expressed, that but for the judicial and military terrorism which was brought to bear against him, Judge Birch would have received a majority of the votes of that county. I was present and listened to the speech of Austin A. King, one of the candidates for Congress, and then and yet the judge of this judicial circuit. That speech was delivered on the first day of the October term of the Caldwell circuit court, being, as I believe, the first Monday in October last. At many points in that speech he used language of great severity in reference to that class of citizens whom he suspected of being unfavorable to his election, denouncing them as rebels, disloyalists, and sympathizers, who had forfeited their *right* to vote, and would not be *permitted* to vote. It was distinctly stated in his speech that those who had been or should be enrolled on the disloyal list, or as southern sympathizers, would not be allowed to vote; or if they should attempt it, and even succeed in doing so, by having to take the preliminary oath, they would perjure themselves, and would be liable to indictment by the grand jury of the county, and punished accordingly. These and similar statements and denunciations were made in the presence of the enrolled militia then stationed at Kingston, and were followed by the most unequivocal menaces on the part of said militia towards those citizens, whom, in many in-

stances, they very unjustly charged with being disaffected or disloyal. Persons, in many instances, who had always been orderly and law-abiding citizens, if suspected to be friendly to the election of Judge Birch, were thus insulted, intimidated, and oppressed by said militia, or with their countenance, in divers ways. The sole object seemed to be to deter them from coming to the polls to cast their votes agreeably to their wishes; and they were so deterred, almost in a body. I was myself of the number, and cannot be mistaken in what I am stating. I had previously, for simply extending to Judge Birch the courtesies of a gentleman and former acquaintance, been most rudely insulted and mistreated by the military friends of Governor King, whilst simply attending in the most quiet and orderly manner to the business of my profession.

"For many weeks pending the election contest it was publicly stated by the friends of Judge King, and by the military who were in his interest, that Judge Birch was a rebel, and that all of his friends were such, and could not live in the county, and would be banished the county or put out of the way; and since the election, some of the best citizens have left the county, or are preparing to do so at great sacrifices, in order to avoid, if possible, the fearful consequences which they have been made to apprehend. Judge Birch had himself narrowly escaped secret assassination at the hands of two of the military friends of King, (as was witnessed and believed by myself, and two other gentlemen who happened to be riding with him away from Kingston, after he had spoken in reply to King, at the October court,) and so notorious and so desperate was the open partizanship of this class of the friends of Judge King, that scarce any man felt himself safe in being even suspected to be the friend or supporter of Judge Birch. A reign of unparallelled terror was thus inaugurated and kept up until after the election was over, resulting as already stated, every feasible means having been apparently resorted to by Judge King and his friends to frighten, harass, and intimidate every citizen who was even suspected of being opposed to his election to Congress.

"As already stated, it was by the inspiration of an almost universal terror throughout the county that the friends of Birch were either silenced and kept from the polls, or in many instances overawed and constrained to vote for King. Instances of the latter description came under my personal observation on the day of election at Kingston, and still other instances have been reported to me by the parties themselves. Others, friends of Birch, less intimidated than the great body of them had been who staid at home, came to Kingston to vote for him, but relinquished the idea and returned home, after hearing and seeing the condition of things by which they were overshadowed and deterred. Men with but little property and large families were made to fear that it would be pressed or taken from them by the military if they voted for Birch, and men of larger means that they would be additionally assessed; and all this, it was argued, would be but naturally upheld by King, as the continuing judge. I may safely add to this, (such had been the conduct and such the denunciations of a portion of the militia,) that the additional fear of assassination, conspiring with the fear of indictments, rendered the election in my county the most 'quiet and orderly' I ever witnessed, but it was emphatically the quiet of despotism upon the side which had all the arms of the county in their hands, and of submission upon the side which had been wholly disarmed, and who consequently felt themselves at the feet of their intolerant oppressors, who everywhere denounced and prevented either a fair or a full election. If I have, in hastily throwing together the foregoing statements, spoken too warmly, it is because the outrages to which I have adverted are yet fresh in my memory, and that of hundreds of my countymen, who were proscribed and overawed as I have attempted to describe. And the only regret for which I feel myself responsible is, that my pen is inadequate to more fully describe the condition to which we were reduced. It will, perhaps, suffice to add that it was such, in all its concurring circumstances and surroundings, that our candidate for Congress received but thirty-two votes in the county, one or two of which (alone) were cast at the county seat; and that, as already stated, he was, in our estimation, the preference and the choice of a majority of the legal voters of the county."

Having thus grouped together the testimony which has specific relation to four out of the ten counties of the district, it is deemed appropriate to the *simplification* of the issue to draw attention at this point to the fact, that by the rejection of the poll of these counties *alone*, it would leave the contestant with a majority of 214 votes in the remaining counties of the district—the vote of those remaining counties not thus *unquestionably* invalidated, being officially certified at follows:

	Birch.	*King.*
Chariton	277	330
Clay	582	159
Clinton	465	273
Jackson	128	334
Lafayette	14	450
Platte	877	583
Totals	2,343	2,129

Such being the aggregate footings of the election, and such of course sufficiently suggesting, at least, its recommittal to the people, such additional testimony as I may be permitted to throw together by the courtesy of the House, will be with a view of additionally demonstrating that the judicial and military overawing which is charged upon the sitting member and his partizans, was not only collusive and *systematic*, but operated to the practical exclusion of indefinite *thousands* whose only crime consisted in preferring that the contestant, instead of the sitting member, should represent them in this national forum. As this, however, furnishes but an additional or a cumulative reason why such an election should at least be stamped as a nullity, I of course cast myself upon the courtesy of the House, in the hope that I may be patiently listened to, for that purpose, whilst reading from a few pages more. They will have relation mainly to my own county, where the sitting member was also "the judge," and where my majority was cut down to 198, instead of "at *least* 400," as—it will presently be listened to—it probably would have been, had it not been for the "judicial and military terrorism" which I have charged upon the sitting member, and which is additionally disclosed in the following testimony.

At page 20, John W. Moreland corroborates the testimony of Judge Viglini, which I read half an hour or more ago, as follows:

"I am a resident of Clinton county, Missouri—am the representative elect of this county to the next General Assembly of the State—joined the military service in a company of three years' United States volunteers in November, 1861, and was honorably discharged on the 10th of August last, on account of physical disability. I was present at the opening of the October circuit court for the county of Clinton, and heard Austin A. King, a candidate for Congress, and being at the time, as he yet is, the circuit judge for this judicial circuit, make a speech as a candidate aforesaid. Among other things, he declared that the rebels had no rights which any honest man ought to respect; that the men who had enrolled on the disloyal list, as he phrased it, ought not and would not be permitted to vote; and that if they did vote they would be guilty of perjury and would be indicted. The whole tenor of his speech was calculated to inflame the militia then in camp and under arms, and to incite them to interfere at the elections and prevent men from voting. I subsequently heard leading officers and members of the militia declare that no man enrolled as a sympathizer should vote. The impression which he (King) seemed anxious to make upon the people was, that no sympathizer would be permitted to vote, or, if he was permitted to vote, he would be indicted for perjury, under his instructions to the grand jury; and this was believed by a great many."

On the same page and the following one, James D. Vanhook testifies as follows:

"I am a physician and surgeon, and reside in the town of Plattsburg, Clinton county, Missouri. I heard the electioneering speech of Austin A. King at the October term, 1862, of the circuit court of said county. His views in relation to the settlement of our present difficulties were of a radical character, being opposed to all compromise until the rebels laid down their arms; whilst those of Judge Birch, (whose speech I also heard) were in favor of an adjustment on the basis of the Crittenden compromise, or its equivalent. In other respects the spirit and tenor of King's speech was calculated to exasperate and excite the militia of the county, who were generally favorable to his election, against the men who were styled southern sympathizers, and who had been enrolled by military authority on what was called the disloyal list, (and who were understood to be favorable to the election of Judge Birch,) and to inducee them to so interpose their bayonets at the polls or elsewhere as to prevent such sympathizers from voting. He stated in his speech distinctly that southern sympathizers had no right to vote, and that if they did vote they would lay themselves liable to be indicted at the next session of the grand jury."

On page 21, Henry Essig testifies, as follows:

"I am a physician and surgeon, and reside in the town of Plattsburg, Clinton county, Missouri, and have resided there for the last twenty-six years. I heard Austin A. King make an electioneering speech at the court-house during the October term, 1862, of the circuit court of Clinton county. He was speaking as a candidate for Congress, and that portion of his speech which related to the present disturbed condition of the country was calculated to deter those persons who were denominated southern sympathizers from voting at the November election (then approaching,) particularly those who were enrolled on what he (King) denominated the disloyal list. His object seemed to be to incite the militia (who were generally in his favor) to interfere in such a manner as to prevent southern sympathizers from coming to the polls or offering to vote; but seeming to fear that this might not be sufficient to keep them away, he labored to impress it upon the audience that all of that class who did vote would commit perjury, and would be liable to indictment, and that they would be indicted. I cannot, of course, recall his precise expressions, but they were of the purport above stated, and the emphasis, countenance, and gestures, with which he accompanied his expressions could leave no doubt upon any one that he designed that this class of voters should be overawed from voting, from the double fear of the militia and the court of which he was judge. Judge Birch (who was one of the competitiors of Judge King for Congress) was regarded as a Union man, and was voted for accordingly by Union men, (myself among the number,) whilst the more just and liberal ground which he took in respect to the manner of restoring the Union gave him the general countenance and support of what were called southern men or southern sympathizers, or, as Judge King called them, disloyalists. He was emphatic in his declarations that rebels had no rights, and hence had no right to vote; and he used the term "rebel" and "southern sympathizers" on the disloyal list as synonymous, when inveighing against their right to vote."

On the same and the following page, Columbus Jones testifies as follows:

"I am a farmer, residing about three miles from Plattsburg, Clinton county, Missouri. It was my misfortune, at the commencement of the present political troubles, to kill a citizen, who was a secessionist, in an affray growing out of a dispute upon questions involved in the present civil war. Judge King was then practicing law, and I employed him to defend me. At our last circuit court (in October last) he took me aside, after he had made his speech as a candidate for Congress, and after calling my attention to the balance I was owing him as his fee, entered into conversation with me about the election. In that conversation he stated to me with great earnestness that a southern sympathizer had no more rights than a slave; that they had no right to vote, and would not be allowed to vote; that they were rebels, and if they did vote they would perjure themselves. He said the militia would be on hand, and it was through them that I understood him to mean that the rebels or sympathizers would not be permitted to vote; but that if any of them did vote they would perjure themselves and be handled for it. I was not in the court-house when he made his speech, but from the whole drift of his conversation to me I was given to understand that it would not be safe for a southern man to attempt to vote, much less to actually vote. After King's speech I heard several militiamen say that they would back him in his views; that a rebel or a sympathizer had no right to vote, and should not vote. The militia from all parts of the county were then encamped at Plattsburg."

On pages 22 and 23, William Morris testifies as follows:

"I reside in the town of Plattsburg, Clinton county, Missouri, and have done so for the last twenty years. I was a candidate for a county judgeship at the recent election, and mingled much with the people, privately and publicly, in all parts of the county. I have no doubt, from all I saw and heard, that a great number of people were deterred from voting in the recent election—enough, had they all voted, to have given Judge Birch at least four hundred majority for Congress in this county. The reasons, in my opinion, why so many stayed away from the polls were mainly referable to the declarations of Governor King and the militia, impugning the right of southern sympathizers to vote, and threatening them with the consequences. Quite a number told me they would go forward and offer to vote, but that they did not want to be insulted and refused. I heard the speech of Governor King, (Austin A.,) who was a candidate for Congress, at the October term of the Clinton circuit court. The attendance was large, including a number from several of the adjoining counties of the district. His speech was extremely ultra, especially in respect to that class of citizens who were denominated southern sympathizers, who had to be enrolled on what he called the disloyal list. He said such men had no right to vote, and would not be permitted to vote; or that if they were permitted to vote, they would commit perjury and be liable to indictment and punishment accordingly, and that all that would be properly seen to. There grew up, in consequence, a general impression that it was not safe for a southern sympathizer to vote, especially for Birch, for whom, it was generally understood, they were inclined to vote; and, as I have already stated, I am satisfied that many such stayed away from the polls entirely, especially at the Cameron precinct, where I was on the day of the election. On the morning of the election I went into Cameron with John Snow, one of the judges of the election. He remarked, in the course of conversation as we went to town, that so far as he was concerned, no man who sympathized with the South, or ever had done so, could vote at the Cameron polls, of which he was one of the judges. There was a squad of militia in town, understood to be there to "look after the election;" and, as already stated, it was understood that sympathizers would not be allowed to vote, or that if they did vote they would be liable to indictment. I stayed there until about 2 o'clock, up to which time Judge Birch had received but one vote."

On the same page, George W. Davis testifies as follows:

"I am a farmer, residing in the neighborhood of Miller's Mill, a voting precinct in Clinton county, Missouri, and was at the election which was held at that precinct on the 4th of November last. Only between 60 and 70 votes were polled there at that election. At the previous election, two years before, 221 votes were given there. From my general acquaintance with the people of the township, my opinion is that Governor King received the votes of all who were favorable to his election, whilst great numbers of those known to be friendly to the election of Judge Birch refrained from going to the polls at all. Having heard the speech that was made by Governor King, at the court-house, in Plattsburg, some four weeks before the election, together with what was understood to be the purpose of a portion of the militia, and having also heard many of the people talking on the subject before the election, I am confident that many of the friends of Birch were deterred from coming to the polls, at that precinct, from fear of the consequences (judicial and military) which might result to them from voting for them. A squad of the enrolled militia belonging to the township (all friends of King) were there, with their arms, &c., for what purpose I do not know; but the understanding that they were to be there contributed, among other reasons, to deter great numbers of citizens, as already stated, from going to the election at all.

"Several who voted for Judge Birch yet fear that they are to be indicted for voting, and to be tried before King, as judge; for such was understood to be the menace held forth in his speech already alluded to."

Referring to the official testimony on page 24, where it will be seen that at this precinct the sitting member received 35 votes to my 29, (out of a presidential total of 221,) I read from the testimony which will explain it as follows:

John R. Black:

"I am a farmer and reside in the township in Clinton county, Missouri, of which Miller's Mill is the voting place. I was friendly to the election of Judge Birch to Congress, and would have voted for him at the election which was held the 4th of November last; but from what I heard that Judge King had said in his speech at Plattsburg about sympathizers having no right to vote, and that if they did vote they would be liable to indictments for perjury, I did not go to the election at all. This I know was the case in my neighborhood, generally, where the people were almost unanimously for Birch, but were afraid to vote for him, and did not vote for him from fear, as already stated. I think t entirely safe to say, that but for the terrorism and apprehension which were created by the public and private declarations of King, who was judge of the circuit court, and was understood to intend to hold on to that station for nearly a year after the election, and who, it was understood, would instruct the grand juries to find indictments against all "sympathizers" who voted, Birch would have gotten at least two or three votes to King's one at that voting place."

James P. Arterburn:

"I am a farmer, and reside in the township of which Miller's Mill is the voting place, in Clinton county, Missouri. I live about four miles from the residence of John R. Black, whose deposition has just been read to me by the notary. What he states of himself and his neighborhood is true of myself and neighborhood, every one of whom would have voted for Judge Birch for Congress, but that we were afraid to do so for the reasons stated by Black. Before the speech of Governor King we had all intended to vote for Birch; but after that speech, which I heard, we all concluded it would be unsafe for us to vote, and staid away from the polls accordingly."

That I may be relieved of all necessity to canvass the judicial interpretations thus intimidatingly foreshadowed by the sitting member, whereby entire *neighborhoods* of my supporters were overawed from the polls in the congressional canvass, I proceed to demonstrate, in the last place, from the testimony of the same unimpeached and intelligent witnesses, that the venerable judge himself had reached an opposite and correct conclusion with respect to the rights and duties of the same class of citizens, after he had *deserted* the party which elected him to Congress, and when he was seeking to have them *beaten* in the judicial elections of the following year. Upon this point William Morris testifies as follows:

"Question by contestant. As you have previously given testimony in respect to Governor King's speech when he was a candidate for Congress, (in respect to the qualifications of voters,) please state whether you heard his speech a year afterwards, (a few weeks ago,) when he was addressing the people from the same stand in favor of one of the judicial tickets which was voted for on Monday last; and if so, was his language and his teachings substantially the same, or substantially different?"

Answer. I heard a portion of both speeches, and never heard two that were more essentially different in respect to the right and duty of the people to give their votes. His Congress speech was of a character (as stated in my previous deposition) to create the impression that it was unsafe for any of the so-called "southern sympathizers" to vote, (whilst he continued as judge,) whilst his judicial electioneering speech was of a character to encourage them *all* to vote. And I think I can safely say that no one was afraid to vote at the recent election in this county who was entitled to a vote under the convention ordinance."

Upon the same point, the representative of the county, testifies as follows:

"Question by contestant. Having stated, in the depositions which you gave in this case on the 12th of December last, of which this is intended as a continuation, the substance of Judge King's denunciations against 'southern sympathizers,' and of his declarations in opposition to their right to vote, and the consequences they would incur if they did vote, will you please state whether you also heard his speech from the same stand, and upon the same points, on the first day of last October court; and if so, did he maintain the same sentiments and opinions which he put forth in his congressional speech, or opposite ones?

"Answer. I listened to both speeches with great attention, and they were wholly unlike, both in the sentiments he expressed in regard to the southern sympathizers, and their right to vote. In his last speech he was exceedingly earnest in urging them all to vote, as otherwise the radicals might succeed in electing their ticket for judges, which, he argued, would lay the foundation for the utter ruin of the country. He repeatedly proclaimed that southern sympathizers had the same right to vote that the radicals had, and that it was their highest and most urgent duty to do so; and that if any person interfered with them in *any* manner, (emphasizing the remark,) either before or *after* the election, for voting for just whoever they pleased to vote, they would be made to suffer for it most severely and undoubtedly. His whole speech, indeed, was so totally different from what his congressional speeches had been, that the remark was quite common, directly afterwards, that he was at last aiming to ride the same horse that Birch had all along ridden; and in many respects it seemed clear that they had come to occupy a common platform."

Judge Viglini testifies as follows:

"Question by contestant. As you have stated in a previous deposition the substance of Governor King's language (in his speech) when he was a candidate for Congress in October, 1862, please state whether he held the same language in his speech in October, 1863, in respect to voters and voting in the then approaching judicial election?

"Answer. He did not hold the same language, or anything like it. On the contrary, it was a common remark, amongst those who heard him, that he had at last got on to Birch's platform as to the right to vote, as well as several things else. He warmly urged the people (sympathizers and all) to turn out and support the anti-radical ticket —assuring them that they had the right to vote *just as every one else had*, and that if any person interfered with them in any manner for exercising that right, either before or after the election, they would be punished for it 'with a vengeance;' but that there really was no danger that any person would dare to so molest or interfere with them. The whole tenor of his speech, in this respect, was as different in tone and emphasis from his congressional speech as it could be; and the effect was, that with the exception of half a dozen or less, who were excluded by the express terms of the convention oath, for having been in arms since the 17th of December, 1861, no one seemed afraid to vote in the election just past."

William P. Hooper, as follows:

"Question by contestant. Please state whether you heard the speech made by Judge King when he was a candidate for Congress in October, 1862, and also his speech in opposition to the radical ticket for supreme court judges in October, 1863; and if so, please state the resemblance, or the want of resemblance, in respect to the right and the duty of that class of people who are called 'southern sympathizers' to vote.

"Answer. I heard what he said in both speeches upon that subject, and was astonished at the change which his opinions seemed to have undergone in the course of the year. The convention oath remained the same, and the rights and duties of that class of the people whom he denounced as 'southern sympathizers' were, of course, the same, yet in his Congress speech he held up to them the penalties of perjury and military punishment, to deter them *from* voting; whilst in his speech against the radical candidates for judges, he vehemently urged them *to* vote, assuring them of their perfect right to do so, and that they need not apprehend the slightest danger from any quarter. I certainly never heard two speeches that seemed to

me more entirely opposite in their tenor and teachings; and such was the general opinion of those who heard both speeches, and who have since conversed with me upon the subject.

"I am the clerk of the county court and the keeper of the election records. The vote in this county at the judicial election on Tuesday last was greater than its proportionate vote in the previous judicial election; whereas the congressional vote at the last election was several hundred short of the vote in the previous election for a Congressman."

And John Cox, as to the manner in which he spoke in his *own* county, as follows:

"Question by contestant. Did you hear King make a speech at Richmond, on the day of the election for the supreme judges, on the 3d of this month? If yea, how did he speak in respect to the right of southern sympathizers (as they were called) to vote?

Answer. He very earnestly exhorted them all to vote, alleging that they had the same right to vote that other citizens had; and he also called upon the refugees from Jackson and Cass counties, who had fled into Ray under the order of General Ewing, to come forward, in like manner, and cast their votes against the radical ticket, which he spoke against with great bitterness and disrespect, both politically and professionally.

As comment upon such a record would be but little short of a contempt to the understanding of the House, I will copy but a single deposition to demonstrate how it was that the terrorism complained of extended to the ranks of the militia *itself*, and that if such and similar overawings are to be endorsed instead of rebuked at the hands of those upon whom the Constitution devolves the duty to "judge of the elections" under which we meet each other here, the position of a Congressman will cease to command even the *prima facia* consideration which should be accorded to the *real* Representative of the people. In other words, the mere military commandants will soon become *every* thing, whilst the people and the soldiery, who fight the battles and feed the armies and pay the taxes of the Republic, will become practically *nothing*.

At page 34, Edward Brooking testifies as follows:

"I reside on the eastern edge of Clinton county, Missouri, near the line of Caldwell and Ray. In a running conversation between two of my neighbors and myself, concerning the unfairness and terrorism of the election, and in which I repeated what I had heard concerning an extra stack of hay which it had been said would be assessed against one of Birch's friends because he had voted for him, these neighbors replied that that was *nothing;* that they (themselves) had preferred Birch as their candidate, and would have voted for him if things had not got so tight that they were afraid to do so, and hence did not vote at all, or words to that effect. Both these neighbors were in service in the enrolled militia at the time of the election, and one of them has since enlisted in the volunteer or regular service. This conversation, with these two militiamen, took place shortly after the congressional election last year; and I have reason to believe that there were several others in my neighborhood who were similarly afraid to vote for Birch, and hence did not vote at all."

As every man who knows the meaning of "*extra duty and no promotion*" will but readily appreciate the point of the foregoing, it needs, of course, no additional explication. As little need it be explained that the same considerations will generally deter the soldier from even *testifying* to the displeasure of his commander—and that thus "the iron wheel" is preserved *intact*. It is the supervision and the reprehension of this House *alone* that can turn aside this fruitful affluent of corruption and oppression; and this can only be done by the stern rejection of every ballot which was not "free" in the sense ordained by the Constitution which you have severally sworn to support.

I come lastly, in the absence of local testimony from the remaining counties, to the deposition of a witness upon whose judgment and candor I was induced to rely in selecting him for the service which is testified to, as follows:

"Question by contestant. Please state whether you canvassed this congressional district for Judge Birch during his race for Congress in 1862. What was the object of that canvass; and what then were, and yet are, your opinions in respect to its then probable results?

"Answer. I was engaged in distributing the circulars of Judge Birch and his notices to address the people as a candidate for Congress, in the various counties in the sixth congressional district for nearly three weeks, during the month of Sept., 1862. I was induced to undertake this service for the judge, in order not merely to serve him in that particular respect, but to obtain such a view of the convass for him (as his friend) as might probably be relied upon in respect to its results. I found, in passing through the district, that he was everywhere regarded, and would be supported, as the candidate of the constitutional pro-slavery party; and I did not hesitate to express the opinion to him, on my return, that, if there was no military interference against him, he would beat Governor King at least eight or ten thousand votes. I am yet of the same opinon. Mr. Samuel was then scarcely counted in the canvass; and the support of Governor King seemed to be almost exclusively by the radicals, including the newly organized militia. There were symptoms of military interference against Birch as I passed through the district; and the fear was even then entertained, in some places, that it would take the public shape it afterwards assumed; but the Judge did not seem to think it would be possible for his adversaries to get it up to such a pitch as to defeat his election; nor did I."

That the opinions thus entertained may have such circumstantial corroboration as they are entitled to from other portions of the record—referring to which the case on my part will be closed for the present—it is deemed sufficient to state that in the county of Lafayette, where (as in several other counties) I was unable to obtain any legal testimony beyond the official vote on file in the office of the Secretary of State, the falling off from the presidential vote was 2,064; and that of the comparatively few votes that were *given* in that county, the sitting member received 450, and myself but 14. For the single purpose I have in view, it will be unnecessary for me to read, in this connection, the authorized official statements, which not only "unearthed" the sitting member before the committee, but gave him the *lead*, in this county as elsewhere, in the *repression* of the popular voice, which was everywhere impatient to repudiate and consume him. It will hence suffice to repeat that, whilst his entire vote in the district was but 4,243, its *aggregate* falling off, between the presidential and congressional election, was 11,390.

If, therefore, upon the whole record in this case, there be not developed such a *concurrence* of vitiations as to invoke against them the *marked* discountenance of the House, it needs no moral seer to predict the status of your future

associates in this thence dishonored forum of the American peerage.

It is but added, therefore, that having reserved for my rejoinder or conclusion the explication of such additional facts and circumstances as may become necessary to the harmonious elucidation of *the entire record* in this case, I shall intermediately trust to the intelligent action of the House to discriminate (if necessary) between what is replied from the *testimony* and what is *not*.

That being the only additional favor which I ask at the hands of this dignified national judicatory, there remains to be rendered but the tribute of a respectful and self-respecting thankfulness for the patience with which you have listened to me, and to commit the case of my outraged and overborne constituency to your upright and intelligent decision.

TO THE PEOPLE OF THE SOUTH MISSOURI DISTRICT.

WASHINGTON CITY, *June* 2, 1864.

Having submitted to the House of Representatives, on yesterday, the foregoing exposition of the "judicial and military terrorism" through which you were overborne in our last congressional election, it remains only to be added that any apparent contrariety in the subsequent proceedings is covered by the significant tenacity with which the House resisted every motion which sought to divest it of its continuing *jurisdiction* of the case. I shall, however, take no further action in the matter during the present session—intending, as I do, to procure from the gentlemen whose good names were so speciously invoked in the closing speech of the sitting member in derrogation of my testimony, their sworn *repudiations* of the statements thus audaciously ascribed to them. After this, it will of course remain to be seen whether even the "sitting member" will retain the hardihood to confront this additional testimony as to the *utter* mendacity through which he contrived to avoid official exclusion on yesterday.

Being restricted to a few additional lines on this occasion, you are respectfully referred to the yeas and nays as denoting the only member from our State who took open sides *against* you in this controversy; and need scarcely be informed that this was done upon the alleged apprehension that if the election was remitted back to the people "a *radical*" would be elected.

As such a motive of action will sufficiently suggest its own criticism, I shall content myself with sending amongst you the correct report of the proceedings as they will appear in the Quarto "Globe" next week. Placing thereby on file, as it were, in every township in the district the official *record* of the case thus far, it will be thenceforth impossible for either of the parties to it to escape the legitimate judgment of the country, either as to the substantial *merits* of the controversy, or as to the means so persistently resorted to by the sitting member to degrade it into a contest of technicalities and of *party*, and *thereby* to keep himself in a seat which he thus indirectly admits he is not entitled to by RIGHT.

That the *amazing* falsehoods so speciously put forth in the closing speech above referred to, should have nevertheless failed (45 to 50) to carry the whole subject to the table, as was his purpose in making it, *just before that motion was to be renewed*, can only be accounted for on the supposition that he is beginning to be known here, as well as he is at home. It suffices to add that the aggregate of the voting has the effect already stated, whatever may appear to the contrary; and *as I have no reason to doubt that in accordance with what you denote your wishes to have been in the coming Election, will be the ultimate decision of the House, at the opening of its next session*, I am of course content.

It is trusted that the speeches and other documents I have sent amongst you have satisfied you as well that I have perceived no cause to change the political affiliations under which my last canvass was conducted, as that we can *never* have the restored and peaceful Union of our fathers, either upon the affirmative and aggressive theory of the party in power, or as practically upheld and encouraged by the "men and money" acquiescence of "the sitting member," *including his support of the pending tariff bill!* Enough, however, of this seeming abnegation of the *duties* of a Congressman, whilst assuming to *be* a Congressman, until such time as this and kindred topics may be so discussed in your hearing as to enable you to calmly and intelligently render a verdict from which, legitimately, there is no appeal.

Your fellow citizen,

JAMES H. BIRCH.

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